

Public Legal Services Division
Massey House
Stormont Estate
Belfast
BT4 3SX

30 January 2015

Dear Sirs,

RE: Public Consultation – Scope of Civil Legal Aid

I am writing in response to your Consultation on the Scope of Civil Legal Aid. I welcome the opportunity to provide our advice to you on this important subject.

As you will be aware the Office of Commissioner was set up under the Commissioner for Children and Young People (NI) Order 2003. The primary aim of the Commissioner is to safeguard and promote the rights and best interests of children and young people (CYP) in Northern Ireland. To achieve this, the Order establishes the Office with a range of duties and powers. Under Articles 7(2)(3) of the legislation, NICCY has a mandate to keep under review the adequacy and effectiveness of law, practice and services relating to children and young people by relevant authorities. Article 7(4)(b) of the Order also enables the Commissioner to provide advice on such occasions as she feels appropriate or necessary.

The Commissioner is further required to have regard to any relevant provisions of the United Nations Convention on the Rights of the Child (UNCRC) when conducting her work. It is on this basis this advice is submitted; the general aims, themes and specific provisions of the UNCRC can purposefully shape this proposal in order to safeguard the best interests of children and young people.

The primary concern in relation to your proposal to restrict or remove legal aid from private family law disputes, is in the impact this may have on the children of the family who are in conflict. We know from the Northern Ireland Courts and Tribunal's Children Order Bulletin that from April to June 2014 there were 8652 interim orders made by Courts, the majority of which (3954) were in relation to contact. This figure clearly shows the extent of the issues which impact on children and young people in Northern Ireland.

The UNCRC is based on four cornerstone principles which are non discrimination (article 2), the paramountcy of the best interests of the child (article 3), rights to survival and development (article 6) and the right to respect for the views of the child (article 12).

However, the UNCRC also explicitly sets out the role that the State must assume in rendering appropriate assistance to parents and legal guardians in the performance of their child rearing responsibilities. Ensuring that a child maintains a relationship with both parents (where it is in their best interests) is a fundamental parental role and Article 18 requires the State to provide appropriate assistance to parents to allow them to realise this right for their children and young people. In many instances, it will only be through obtaining legal aid that a parent will be able to litigate in order to ensure that the best interests of the child are safeguarded.

NICCY would therefore call on the Department to ensure that when they are making decisions regarding the availability of legal aid for private family law matters, that they take into consideration the duties placed on the State by the UNCRC both in terms of assisting parents but also in the duty to ensure that the best interests of children and young people are safeguarded.

In relation to the Equality Screening Form which was provided with the consultation, NICCY believe it is essential that time is taken to assess, in detail, the impact that these proposals will have on children and young people, not only as potential recipients of legal aid but also as the subject of family proceedings cases. We note that currently the Department believes that there is insufficient data available to make an assessment of the potential impact on children and young people. It is vital however, that the Department seek to obtain robust, accurate quantitative and qualitative data to assess same.

NICCY's position is that all legislative and policy developments should be assessed against the potential impact on children's and young people's rights. NICCY has developed a step by step guide on how to conduct a 'child rights impact assessment'. It begins by outlining what is meant by a children's rights impact assessment, why this type of assessment is necessary and how, given the specific focus on the issue of rights, this process can provide a more robust, transparent and evidence-based approach to policy development and law making in Northern Ireland.

The guide is available here http://www.niccy.org/uploaded_docs/NICCY%20CRIA%20%20web%20version%20May%2008.pdf. We would encourage you to make use of this resource in relation to the above proposals.

We trust that this assists and look forward to hearing from you.

Yours Sincerely

Mairead McCafferty
Chief Executive